

# In the Supreme Court of the United States

OCTOBER TERM, 1965

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No. 40

CALIFORNIA, PETITIONER

v.

LYMAN E. BUZARD

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*ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF CALIFORNIA*

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## MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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Respondent is a resident of the State of Washington who is stationed in California pursuant to military orders (R. 8, 12-15, 26-27). While he was temporarily assigned to Squadron Officer's School in Alabama, petitioner purchased a car in that State, registered it there, and paid the fees required by Alabama (R. 15-17). On his return to California, he was charged with violating the State law which required him to obtain a California registration for the car and to pay California's license fees and excises on the use of motor vehicles. The Justice Court found him guilty, fined him fifty dollars, suspended the judgment, and placed him on probation for six months (R. 5). The District Court of Appeals affirmed (R.

(1)

38-44). The Supreme Court of California reversed (R. 45-49).

In this Court, as in the courts below, respondent relies upon subsection 2(b) of Section 514, 50 U.S.C. App. 574, which provides that a serviceman's exemption from taxation by a State where he is temporarily stationed:

\* \* \* shall include \* \* \* licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State \* \* \* of which the person is a resident \* \* \* has been paid.<sup>1</sup>

It is agreed that the exemption granted by subsection 2(b) is conditional upon compliance with the proviso. The sole issue in this case therefore turns upon its meaning. Respondent argues that since the State of Washington requires no motor-vehicle fees of a resident who does not use its highways, there was no "license, fee, or excise required by" his State of residence.<sup>2</sup> We believe that the proviso is satisfied only

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<sup>1</sup> Since it is plain that the taxes which California seeks to impose (unlike those imposed by Mississippi in the *Snapp* case, No. 16) are "licenses, fees, or excises imposed in respect to motor vehicles," and that the respondent's automobile (unlike the immobile trailer in the *Snapp* case) is a motor vehicle within the meaning of the federal statute, subsection 2(b) is the only possible source of a federal exemption from the California tax.

<sup>2</sup> Petitioner does not contend, and could not, that Alabama was his state of residence for the purposes of satisfying the proviso to subsection 2(b). Section 514(1) provides specifically that, for purposes of the statute, a "person shall not be deemed to have lost a residence \* \* \* in any State \* \* \* solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence \* \* \* in \* \* \* any other State \* \* \* solely by reason of being, so absent." Moreover, the proviso to subsection 2(b) requires that fees

where there has been an actual payment of whatever fees the State of residence requires from those who in fact use its highways.<sup>8</sup>

The effect of the proviso, as respondent construes it, is to subject the serviceman to the requirements of the State in which he is stationed only when he has failed to comply with the valid requirements of his home State. Since the States almost uniformly base their licensing requirements on use of the motor vehicle within the State, the result is that the serviceman either is subject to no licensing requirements or to multiple licensing requirements. He is subject to no requirements (as respondent urges in this case) when he has never driven his motor vehicle in his home State; he then has never become subject to the licensing requirements of that State, the proviso is not applicable, and Section 514(2)(b) prevents the State in which he is stationed from imposing its licensing requirements. He is subject to multiple licensing requirements if he drives his vehicle in his home State under circumstances which subject him to that State's licensing requirements, but fails to comply therewith. He then would be subject to the licensing requirements of his home State and, under the proviso, also to the licensing requirements of the State in which he is stationed. Not only is there no indication that Congress had any intention to impose

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have been paid to the State of which the serviceman is presently a resident, and petitioner was no longer connected with Alabama when California sought to impose its fees.

<sup>8</sup> We have set forth more fully our views about the proviso in Section 514(2)(b) in our *amicus* brief filed in the companion case of *Snapp v. Neal*, No. 16.

such a bizarre sanction to assist the domiciliary State in collecting its taxes, but the obvious purpose of the proviso is quite different.

If Congress had simply forbidden the State where a serviceman was stationed from imposing a license fee with respect to the motor vehicle or its use (*i.e.*, if Congress had not added the proviso to Section 514(2)(b)), the immediate result would have been that a serviceman stationed in a State other than his home State would probably not have had to comply with the licensing requirements of any State. Section 514 would exempt him from the requirements of the State in which he was stationed; and, since he was not using the highways of his home State, that State would not require him to register his vehicle and pay privilege taxes. He would have little incentive to register voluntarily and pay taxes. Moreover, since the payment of highway privilege taxes is a universal prerequisite to the registration of motor vehicles and the issuance of license plates, the State in which he was stationed might well have unlicensed vehicles using its highways with all of the accompanying problems of identification for theft and accident purposes.

By providing in Section 514(2) an exemption for a non-resident serviceman from the motor vehicle licenses, fees, and excises of the State in which he is operating his vehicle conditioned upon his payment of the motor-vehicle privilege taxes of his home State, Congress insured that a serviceman stationed away from his home State would pay the costs of highway maintenance either to his home State or to the State in which he operated his vehicle. Moreover, no vehi-

cles belonging to servicemen stationed away from their State of domicile would be using the highways without license plates.

In short, in contrast to respondent's contention that the proviso permits a serviceman to avoid all licensing requirements if his vehicle was not taken into his home State, it appears that the purpose of the proviso was to guarantee that a serviceman would pay the license fees of at least one State—either his home State or the State in which he was stationed. The proviso was intended to recognize the legitimate concerns of the States by assuring that servicemen would obtain the registration which is necessary to regulation of the highways and would pay the fees needed to maintain public roads. This deference to State interests was accomplished without subjecting servicemen to multiple-licensing requirements, by granting a conditional immunity from the requirements of the State in which the serviceman was stationed.

There are, it is true, equities favoring respondent's case. Respondent notes that he is willing to defer to the regulatory policies of California; he would register his car in California if he were not required to pay license fees. It might also be noted that, on the particular facts of this case, the serviceman has not wholly failed to pay license fees; he paid those required by Alabama. But Congress did not require the States to allow registration of a serviceman's vehicle without payment of fees; and it did not require a State where a serviceman is temporarily stationed to recognize the license issued by another State where he was also only temporarily stationed. See

n. 2, *supra*, p. 2. It specifically permitted the State where the serviceman is stationed to impose its "taxation" including "licenses, fees, or excise" unless the serviceman "has \* \* \* paid" such taxes to "the State \* \* \* of which [he] is a resident." Like any civilian, the serviceman is subject to the multiple licensing requirements of the various States in which he temporarily resides and uses his automobile, unless he has paid the fees required by his home State.

This result is consistent with the principal purpose of Section 514—to reserve the taxation of the personal property of a serviceman to his State of residence or domicile (*Dameron v. Brodhead*, 345 U.S. 322, 326; *United States v. Arlington County, Commonwealth of Virginia*, 326 F. 2d 929, 933 (C.A. 4))—yet it allows other States which have a close concern with highway regulation and maintenance to impose their motor-vehicle license and fee requirements upon a serviceman who does not register his motor vehicle and pay the appropriate fees in his home State. Consequently, the statute prevents a serviceman who owns a motor vehicle from escaping completely from paying for the privilege of using the highways. And since payment of such fees universally entitles a serviceman to register and obtain license plates, no problem of unlicensed vehicles can arise.

**CONCLUSION**

The judgment of the Supreme Court of California  
should be reversed.

Respectfully submitted.

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